

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5934 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

FARDUMJI R ADAJANIYA THRO' HLRMAHARUPABHAI F ADAJANIYA & 2

Versus

COMPTENT AUTHORITY & DY COLLECTOR & 1

Appearance:

Shri S.H. SANJANWALA, Advocate, for the Petitioners.

Shri D.N.PATEL, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No.1 herein) on 17th December 1983 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the

Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 8th September 1987 in Appeal No.Surat-603 of 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the predecessor-in-title of the present petitioners to be in excess of the ceiling limit by 8254.92 square metres.

2. The facts giving rise to this petition move in a narrow compass. The predecessor-in-title (the deceased for convenience) of the present petitioners filed his declaration in the prescribed form under section 6 (1) of the Act with respect to his holding within the urban agglomeration of Surat. It came to be processed by respondent No.1. After observing necessary formalities under section 8 of the Act, by his order passed on 17th December 1983 under section 8 (4) of the Act, respondent No.1 declared the holding of the deceased to be in excess of the ceiling limit by 8254.92 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Surat-603 of 1984. By the order passed by respondent No.2 on 8th September 1987 in the aforesaid appeal, it came to be dismissed. Its copy is at Annexure-B to this petition. The aggrieved petitioners have thereupon moved this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition. During the pendency of this petition, the original petitioner breathed his last leaving behind him the present petitioners as his heirs and legal representatives. They have come on record in place of the deceased petitioner in view of the order passed by this court on 7th April 1994 in Civil Application No.958 of 1994 made in this petition.

3. It appears that the lands shown by the deceased in his declaration under section 6(1) of the Act except the constructed property were exempt from the operation of the Act by virtue of the order passed by and on behalf of the State on 30th June 1979 under section 20 (1) thereof. Its copy is at Annexure-D to this petition. In that view of the matter, the lands covered by the order at Annexure-D to this petition which were shown in the declaration by the deceased in his holding could not have been declared surplus till that order remained in operation. It is the case of the petitioner that the order at Annexure-D to this petition is in force even today. Learned Assistant Government Pleader Shri Patel for the respondents has not been able to dispute that position.

4. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition cannot be sustained so long as the order at Annexure-D to this petition remains in force. This petition therefore deserves to be accepted.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Surat on 17th December 1983 under section 8 (4) of the Act at Annexure-A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 8th September 1987 in Appeal No.Surat-603 of 1984 at Annexure-B to this petition is quashed and set aside. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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